

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
NO.: 3:19-CV-405

UNITED STATES OF AMERICA and THE
STATE OF NORTH CAROLINA, *ex. rel.*
Heather Coleman,

Plaintiffs,

v.

FAMILY FIRST HOME HEALTH CARE,
INC. and MARION JAMES,

Defendants.

MOTION FOR ENTRY OF DEFAULT

NOW COMES Plaintiffs the United States of America, by and through Dena J. King, the United States Attorney for the Western District of North Carolina, and the State of North Carolina, by and through Joshua H. Stein, Attorney General for the State of North Carolina (together, the Governments), and hereby request, pursuant to Fed. R. Civ. P. 55(a), that the Clerk of Court issue an Entry of Default in this case. In support hereof, the Governments submit the following:

1. On November 14, 2022, the Governments filed their Complaint in Intervention against Defendants Family First Home Health Care, Inc. (“Family First”) and Marion Temeta James (“James”) (together, “Defendants”) pursuant to the False Claims Act, 31 U.S.C. § 3729, *et seq.* and the North Carolina False Claims Act, N.C. Gen. Stat. § 1-605, *et seq.* (the “Complaint”), as set out in the attached Declaration of AUSA J. Seth Johnson. *See Exhibit A.*

2. Defendants, through counsel, waived service of the summons and Complaint. *See* Doc. 43; *see also* Fed. R. Civ. P. 4(d)(4) (“Results of Filing a Waiver. When the plaintiff files a waiver, proof of service is not required . . .”).

3. Thus, Defendants' deadline to respond to the complaint (*i.e.* file and serve an answer or Rule 12 motion) was Friday, January 13, 2023. *See* Doc 43 (60 days from 11/14/2022).

4. To date, Defendants have failed to plead or otherwise defend against the Complaint. As Defendants' signed waiver of service form explicitly cautions: "If I fail to do so, a default judgment will be entered against me or the entity I represent." *Id.*

5. Accordingly, pursuant to Federal Rule of Civil Procedure 55(a), the Governments move the Clerk of Court for an entry of default against Defendants Family First Home Health Care, Inc. and Marion Temeta James.

Respectfully submitted this 17th day of July, 2023.

DENA J. KING
UNITED STATES ATTORNEY

/s/ Seth Johnson
J. Seth Johnson
Texas Bar No. 24083259
Assistant United States Attorney
Suite 1650, Carillon Building
227 West Trade Street
Charlotte, North Carolina 28202
Telephone: (704) 338-3159
Email: seth.johnson@usdoj.gov

Counsel for the United States

–and–

JOSHUA H. STEIN
NC Attorney General

/s/ Lareena J. Phillips
LAREENA JONES PHILLIPS
NC Bar No. 36859
Special Assistant United States Attorney
Special Deputy Attorney General
Medicaid Investigations Division
5505 Creedmoor Rd., Suite 300
Raleigh, NC 27612

Telephone: (919) 881-2331
lphillips@ncdoj.gov

/s/ Madeline G. Lea
MADELINE G. LEA
NC Bar No. 48215
Special Assistant United States Attorney
NC Assistant Attorney General
Medicaid Investigations Division
5505 Creedmoor Rd., Suite 300
Raleigh, NC 27612
Telephone: (919) 881-4747
MLea@ncdoj.gov

Counsel for the State of North Carolina

CERTIFICATE OF SERVICE

Though service is not required under Federal Rule of Civil Procedure 55(a), I certify that I have served a copy of the foregoing motion and attached declaration on Defendants' counsel via email:

Mark A. Jones
Bell Davis Pitt
mjones@belldavisitt.com

Chris Whelchel
Gray, Layton, Kersh, Solomon, Furr & Smith, P.A.
cwhelchel@gastonlegal.com

/s/ Seth Johnson
Assistant United States Attorney